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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

LORENZO MENDOZA MARTINEZ, ELIU  
 MENDOZA, ELIEZER MENDOZA  
 MARTINEZ, and GLORIA MARTINEZ  
 MONTES,

Plaintiffs,

v.

AERO CARIBBEAN, EMPRESA  
 AEROCARIBBEAN S.A., CUBANA DE  
 AVIACION S.A., and ATR

Defendants.

Case No. **11**

**3194**

**COMPLAINT**

1. Montreal Convention
2. Negligence
3. Wrongful Death
4. Strict Liability
5. Negligence
6. Breach of Warranties
7. Wrongful Death

**HRL**

**DEMAND FOR JURY TRIAL**

**INTRODUCTION**

1. Plaintiffs LORENZO MENDOZA MARTINEZ, ELIU MENDOZA, ELIEZER MENDOZA MARTINEZ, and GLORIA MARTINEZ MONTES (collectively, "Plaintiffs") complain against Defendants AERO CARIBBEAN, EMPRESA AEROCARIBBEAN S.A., CUBANA DE AVIACION S.A. and ATR as follows.

**PARTIES**

2. Plaintiff LORENZO MENDOZA MARTINEZ is and at all times herein mentioned resided in Monterey County, California. Plaintiff LORENZO MENDOZA MARTINEZ was a son and surviving

1 heir of decedent Lorenzo Corazon Mendoza Cervantes and a person with standing under California Code of  
2 Civil Procedure ("CCP") § 377.60.

3 3. Plaintiff ELIU MENDOZA is and at all times herein mentioned resided in Monterey  
4 County, California. Plaintiff ELIU MENDOZA was a son and surviving heir of decedent Lorenzo Corazon  
5 Mendoza Cervantes and person with standing under CCP § 377.60.

6 4. Plaintiff ELIEZER MENDOZA MARTINEZ is and at all times herein mentioned resided in  
7 Monterey County, California. Plaintiff ELIEZER MENDOZA MARTINEZ was a son and surviving heir  
8 of decedent Lorenzo Corazon Mendoza Cervantes and a person with standing under CCP § 377.60.

9 5. Plaintiff GLORIA MARTINEZ MONTES is and at all times herein mentioned resided in  
10 Mexico. Plaintiff GLORIA MARTINEZ MONTES was the widow and surviving heir of decedent Lorenzo  
11 Corazon Mendoza Cervantes and person with standing under CCP § 377.60.

12 6. Plaintiffs are informed and believe, and on that basis allege, that Defendant AERO  
13 CARIBBEAN is an international air carrier with its principal place of business in Cuba.

14 7. Plaintiffs are informed and believe, and on that basis allege, that Defendant EMPRESA  
15 AEROCARIBBEAN S.A. is an international air carrier with its principal place of business in Cuba.

16 8. Plaintiffs are informed and believe, and on that basis allege, that Defendant CUBANA DE  
17 AVIACION S.A. is an international air carrier with its principal place of business in Cuba.

18 9. Plaintiffs are informed and believe, and on that basis allege, that Defendant ATR is an entity  
19 of unknown formation with its principal place of business in Toulouse, France and is and at all relevant  
20 times herein has regularly done business in the United States of America, including the State of California,  
21 and is continually and systematically doing business in the United States of America, including the State of  
22 California.

**JURISDICTION AND VENUE**

10. This Court has federal question subject matter jurisdiction pursuant to Article 33 of the Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, S. Treaty Doc. No. 106-45 (2000) ("Montreal Convention") and 28 U.S.C. § 1331 over the claims against Defendants AERO CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and CUBANA DE AVIACION S.A. because the aircraft accident resulting in the death of a passenger that forms of the basis of the claims occurred during an international carriage.

11. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over the claims against Defendant ATR because such claims against Defendant ATR are so related to the claims against Defendants AERO CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and CUBANA DE AVIACION S.A., upon which this Court has federal question subject matter jurisdiction, that they form part of the same case or controversy under Article III of the United States Constitution.

12. Venue is proper in this Court as three of the four Plaintiffs reside in this forum and Plaintiffs have chosen this forum in which to litigate their claims.

**INTRADISTRICT ASSIGNMENT**

13. This action is appropriately assigned in the San Jose Division because three of the four Plaintiffs reside in Monterey County, California.

**GENERAL ALLEGATIONS**

14. On or about November 4, 2010, decedent Lorenzo Corazon Mendoza Cervantes was a passenger in an ATR-72-212 ("SUBJECT AIRCRAFT") on AERO CARIBBEAN flight 883, an international commercial flight ("SUBJECT FLIGHT"). There were 60 other passengers and 7 crew members onboard the SUBJECT AIRCRAFT during the SUBJECT FLIGHT.

1           15.     The SUBJECT AIRCRAFT was designed and manufactured by Defendant ATR and sold to  
2 Continental Express, a United States entity with its principal place of business in Houston, Texas, on or  
3 about the year 1995.

4           16.     On or about November 4, 2010, the SUBJECT AIRCRAFT was owned, maintained,  
5 serviced and operated by Defendants AERO CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and/or  
6 CUBANA DE AVIACION S.A. The SUBJECT FLIGHT was engaged in an "international carriage" as  
7 that term is defined in Article 1 of the Montreal Convention.  
8

9           17.     During the SUBJECT FLIGHT, the SUBJECT AIRCRAFT was caused to crash near the  
10 village of Guasimal, Santi Spiritus province, Cuba, approximately 210 miles southeast of Havana, killing  
11 all 68 onboard, including decedent Lorenzo Corazon Mendoza Cervantes.  
12

13                           **FIRST CAUSE OF ACTION**

14                           **(Montreal Convention)**

15                   **(By All Plaintiffs Against Defendants AERO CARIBBEAN, EMPRESA AEROCARIBBEAN S.A.,**  
16                   **and CUBANA DE AVIACION S.A.)**

17           18.     Plaintiffs refer to paragraphs 1 through 17 and incorporate them into this Cause of Action as  
18 though fully set forth herein.

19           19.     The Montreal Convention provides for a private right of action against air carriers in the  
20 international carriage of persons, baggage or cargo.

21           20.     Paragraph 1 of Article 17 of the Montreal Convention provides, *inter alia*, that a carrier is  
22 liable for damage sustained in the case of the death of a passenger if the accident which caused the death  
23 took place on board the aircraft.

24           21.     Paragraph 1 of Article 21 of the Montreal Convention provides that for damages arising  
25 under paragraph 1 of Article 17, the carrier is liable up to 100,000 "Special Drawing Rights" for each  
26 passenger. Further, paragraph 2 of Article 21 of the Montreal Convention provides that the carrier shall not  
27 be liable above 100,000 "Special Drawing Rights" limit "if the carrier proves that: (a) such damage was not  
28

1 due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or (b) such  
2 damage was solely due to the negligence or other wrongful act or omission of a third party.”

3 22. Defendants AERO CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and CUBANA DE  
4 AVIACION S.A. were carriers as that term is defined in Article 1 of the Montreal Convention. Plaintiffs’  
5 decedent Lorenzo Corazon Mendoza Cervantes was engaged in “international carriage” at the time of the  
6 SUBJECT FLIGHT as that term is defined in Article 1 of the Montreal Convention.  
7

8 23. Plaintiffs’ decedent Lorenzo Corazon Mendoza Cervantes’ death was caused in the  
9 November 4, 2010 accident which took place on board the SUBJECT AIRCRAFT.

10 24. Plaintiffs are informed and believe, and on that basis allege, that Lorenzo Corazon Mendoza  
11 Cervantes’ death was due to the negligence or other wrongful act or omission of Defendants AERO  
12 CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and CUBANA DE AVIACION S.A. or their  
13 servants or agents and that Lorenzo Corazon Mendoza Cervantes’ death was not solely due to the  
14 negligence or other wrongful act or omission of a third party.  
15

16 25. As a direct and proximate result of the conduct of Defendants AERO CARIBBEAN,  
17 EMPRESA AEROCARIBBEAN S.A. and CUBANA DE AVIACION S.A., Plaintiffs pray for all remedies  
18 afforded by the Montreal Convention, including but not limited to the relief set forth in Article 21, as well  
19 as all remedies not prohibited by the Montreal Convention.  
20

21 26. As a direct and proximate result of the conduct of Defendants AERO CARIBBEAN,  
22 EMPRESA AEROCARIBBEAN S.A. and CUBANA DE AVIACION S.A., Plaintiffs pray for all remedies  
23 afforded by law.  
24

## 25 **SECOND CAUSE OF ACTION**

26 **(Negligence)**

27 **(By All Plaintiffs Against Defendants AERO CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and**  
28 **CUBANA DE AVIACION S.A.)**

27 27. Plaintiffs refer to paragraphs 1 through 17 and 26 and incorporate them into this Cause of  
28 Action as though fully set forth herein.

1           28.     The crash of the SUBJECT AIRCRAFT and death of Plaintiffs' decedent was caused by the  
2 negligence, wrongdoing, unlawful acts and omissions, carelessness and willful misconduct of the  
3 Defendants AERO CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and CUBANA DE AVIACION  
4 S.A. in the use, ownership, operation, maintenance, repair, overhaul, inspection, testing, servicing and  
5 monitoring of the SUBJECT AIRCRAFT and in the supervision, training and standardizing of operational  
6 and maintenance personnel; and, by reason of its wrongdoing, Defendants are liable in negligence to  
7 Plaintiffs for the injury and death of decedent and the resulting damages to Plaintiffs.  
8

9           29.     Moreover, Defendants AERO CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and  
10 CUBANA DE AVIACION S.A., as authorized common carriers in air transportation, owed a duty of care  
11 to Plaintiffs' decedent to operate and maintain the SUBJECT AIRCRAFT with the utmost care and to the  
12 highest possible degree of safety. Having breached said duty, Defendants are liable to Plaintiffs for their  
13 injuries and damages.  
14

15           30.     Plaintiffs are informed and believe, and thereupon allege, as a direct and proximate result of  
16 the acts of the Defendants AERO CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and CUBANA DE  
17 AVIACION S.A., Plaintiffs' decedent suffered fatal injuries for which Defendants are liable.  
18

19           31.     As a direct and proximate result of the aforementioned conduct of Defendants AERO  
20 CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and CUBANA DE AVIACION S.A., decedent was  
21 compelled to incur obligations for medical care, medicines, x-rays, hospitalization, and medical supplies.  
22 Plaintiffs do not at this time know the reasonable value thereof but pray that the same may be inserted  
23 herein when ascertained.  
24

25           32.     As a direct and proximate result of the aforementioned conduct of Defendants AERO  
26 CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and CUBANA DE AVIACION S.A., decedent has  
27 lost his ability to earn money to provide support for Plaintiffs. Plaintiffs do not at this time know the  
28 reasonable value thereof but pray that the same may be inserted herein when ascertained.

33. As a direct and proximate result of the aforementioned conduct of Defendants AERO CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and CUBANA DE AVIACION S.A., Plaintiffs sustained general damages. Plaintiffs do not at this time know the reasonable value thereof but pray that the same may be inserted herein when ascertained.

34. As a direct and proximate result of the aforementioned conduct of Defendants, Plaintiffs claim prejudgment interest. Plaintiffs do not know the reasonable value thereof but pray that the same may be inserted herein when ascertained.

**THIRD CAUSE OF ACTION**  
**(Wrongful Death- CCP § 377.60)**

**(By All Plaintiffs Against Defendants AERO CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and CUBANA DE AVIACION S.A.)**

35. Plaintiffs refer to paragraphs 1 through 17, 26 and 31 through 34 and incorporate them into this Cause of Action as though fully set forth herein.

36. As a direct and proximate result of the aforementioned conduct of Defendants AERO CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and CUBANA DE AVIACION S.A., Lorenzo Corazon Mendoza Cervantes died. As a result, decedent's heirs, the Plaintiffs, have sustained noneconomic damages, including the loss of his love, companionship, comfort, care, assistance, protection, affection, society, support, training and guidance.

37. As a direct and proximate result of the aforementioned conduct of Defendants AERO CARIBBEAN, EMPRESA AEROCARIBBEAN S.A. and CUBANA DE AVIACION S.A., Plaintiffs have sustained economic damages, including loss of his financial support, the loss of gifts and benefits, funeral and burial expenses, household services, and economic support. Plaintiffs do not know the reasonable value thereof but prays that the same may be inserted herein when ascertained.

38. As a direct and proximate result of the aforementioned conduct of Defendants, Plaintiffs claim prejudgment interest. Plaintiffs do not know the reasonable value thereof but prays that the same may be inserted herein when ascertained.



**FOURTH CAUSE OF ACTION**  
**(Strict Product Liability)**  
**(By All Plaintiffs Against Defendant ATR)**

39. Plaintiffs refer to paragraphs 1 through 17 and incorporate them into this Cause of Action as though fully set forth herein.

40. At all times herein mentioned, the Defendant ATR is and was in the business of designing, manufacturing, selling, marketing and/or distributing aircraft, including the SUBJECT AIRCRAFT and its component parts, which were distributed and sold throughout the United States, as well as the state of California, to members of the general public and as such are liable to the Plaintiffs for damages under the theory of strict products liability.

41. At all times herein mentioned the SUBJECT AIRCRAFT and its components parts were defective as that term is defined under California law by reason of defects in design and manufacture and failure of the Defendant ATR to give adequate and proper warnings of the dangers existing therein, and adequate instructions regarding the avoidance of such dangers in the use and maintenance of the SUBJECT AIRCRAFT and its component parts.

42. At all times herein mentioned the defective conditions in the SUBJECT AIRCRAFT and its component parts exposed Plaintiffs' decedent to an unreasonable risk of harm and were a legal cause of Plaintiffs' decedent's fatal injuries.

43. At all times herein mentioned, the SUBJECT AIRCRAFT and its component parts were sold, converted, marketed and/or placed into the stream of commerce by the Defendant ATR for use by members of the general public, and such products were defective as that term is defined under California law which were known by Defendant ATR at the time the SUBJECT AIRCRAFT and its component parts were sold, converted, marketed and/or placed into the stream of commerce, and these defective conditions were a legal cause of Plaintiffs' decedent's serious and fatal injuries.



1           44.     At all times herein mentioned, Defendant ATR defectively manufactured the SUBJECT  
2 AIRCRAFT and its component parts. Said defective condition was a legal cause of the SUBJECT  
3 AIRCRAFT's crash and the fatal injuries to Plaintiffs' decedent.

4           45.     Plaintiffs are informed and believe, and thereupon allege, that Defendant ATR placed the  
5 SUBJECT AIRCRAFT into the stream of commerce in a defective condition and such defects described  
6 above, rendered the SUBJECT AIRCRAFT less safe than an ordinary consumer would expect when used  
7 in a normal, intended and foreseeable manner.

8  
9           46.     At all times herein mentioned, the SUBJECT AIRCRAFT and its component parts were also  
10 defective by reason of Defendant's failure to include or place with it adequate and proper warnings and  
11 instructions as to dangers associated with the design and foreseeable use of the products and how to avoid  
12 such dangers, and further, failed to recall the products to prevent incidents such as the one included herein.  
13 Such defects rendered the SUBJECT AIRCRAFT and its component parts defective as that term is defined  
14 under California law, and the defective condition of the SUBJECT AIRCRAFT was a legal cause of the  
15 fatal injuries sustained by Plaintiffs' decedent.

16  
17           47.     At all times herein mentioned, Defendant ATR is and was the manufacturer, designer,  
18 and/or distributor of the SUBJECT AIRCRAFT and its component parts. Defendant holds, and has held  
19 itself out to the public as having superior knowledge, skill and experience in the design, construction,  
20 assembly, manufacture, testing, and inspection of such aircraft and their component parts. In the course of  
21 its business as an aircraft manufacturer, Defendant ATR designed, constructed, assembled, manufactured,  
22 inspected, serviced, converted, tested the SUBJECT AIRCRAFT and its component parts. Defendant  
23 further expressly and impliedly warranted that the SUBJECT AIRCRAFT and its component parts were fit  
24 for intended use, and were airworthy and free of defects. Defendant further marketed, sold, distributed and  
25 caused the SUBJECT AIRCRAFT and its component parts to be introduced into the stream of commerce.  
26  
27  
28

1           48.     At all times herein mentioned, the crash of the SUBJECT AIRCRAFT and the resulting fatal  
2 injuries to Plaintiffs' decedent, was legally caused and/or substantially contributed to by latent defects in  
3 the manufacture of said aircraft and its component parts, and Defendant's failure to warn and/or provide  
4 adequate instructions for the use, and maintenance of the SUBJECT AIRCRAFT and its component parts.

5           49.     Plaintiffs are informed and believe, and thereupon allege, that at the time the SUBJECT  
6 AIRCRAFT and its component parts were sold, converted, marketed and/or placed into the stream of  
7 commerce by Defendant, such products were defective as that term is defined under California law to  
8 persons who could reasonably be expected to use them, and these defective conditions were a producing  
9 cause of Plaintiffs' decedent's fatal injuries. The SUBJECT AIRCRAFT and its component parts were also  
10 defective by reason of Defendant's failure to include or place with it adequate and proper warnings and  
11 instructions as to dangers associated with the design and foreseeable use of the products and how to avoid  
12 such dangers.  
13

14           50.     Plaintiffs are informed and believe, and thereupon allege, by reason of the foregoing,  
15 Defendant ATR is strictly liable in tort to Plaintiffs for the fatal injuries sustained by Plaintiffs' decedent as  
16 a result of the crash of the SUBJECT AIRCRAFT.  
17

18           51.     The actions of said Defendant ATR resulted in decedent Lorenzo Corazon Mendoza  
19 Cervantes suffering severe injuries resulting in his death.  
20

21           52.     As a direct and proximate result of the aforementioned conduct of Defendant ATR, decedent  
22 was compelled to incur obligations for medical care, medicines, x-rays, hospitalization, and medical  
23 supplies. Plaintiffs do not at this time know the reasonable value thereof but pray that the same may be  
24 inserted herein when ascertained.  
25

26           53.     As a direct and proximate result of the aforementioned conduct of Defendant ATR, decedent  
27 has lost his ability to earn money to provide support for Plaintiffs. Plaintiffs do not at this time know the  
28 reasonable value thereof but pray that the same may be inserted herein when ascertained.

1           54. As a direct and proximate result of the aforementioned conduct of Defendant ATR,  
2 Plaintiffs sustained general damages. Plaintiffs do not at this time know the reasonable value thereof but  
3 pray that the same may be inserted herein when ascertained.

4           55. As a direct and proximate result of the conduct of Defendant ATR, Plaintiffs pray for all  
5 remedies afforded by law.

6           56. As a direct and proximate result of the aforementioned conduct of Defendant ATR,  
7 Plaintiffs claim prejudgment interest. Plaintiffs do not know the reasonable value thereof but pray that the  
8 same may be inserted herein when ascertained.

9  
10                                   **FIFTH CAUSE OF ACTION**  
11                                   **(Negligence)**  
12                                   **(By All Plaintiffs Against Defendant ATR)**

13           57. Plaintiffs refer to paragraphs 1 through 17 and 52 through 56 and incorporate them into this  
14 Cause of Action as though fully set forth herein.

15           58. Plaintiffs are informed and believe, and thereupon allege, that the Defendant ATR designed,  
16 tested, developed, manufactured, fabricated, assembled, distributed, bought, sold, inspected, serviced,  
17 warranted, supplied, and/or modified the SUBJECT AIRCRAFT and its component parts.

18           59. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned herein,  
19 the SUBJECT AIRCRAFT and its component parts, were defective when placed into the stream of  
20 commerce by Defendant ATR, and was of such a nature that the defect would not be discovered in normal  
21 inspection and operation by users thereof.

22           60. Plaintiffs are informed and believe, and thereupon allege, that the Defendant ATR, as a  
23 manufacturer, distributor, supplier, and seller of the SUBJECT AIRCRAFT and its component parts, owed  
24 a duty of care to Plaintiffs and Plaintiffs' decedent, that the SUBJECT AIRCRAFT and its components  
25 parts would not be placed into the stream of commerce in a defective condition.  
26  
27  
28

1           61.     Plaintiffs are informed and believe, and thereupon allege, that the Defendant ATR was  
2 negligent in the manufacture and marketing of the SUBJECT AIRCRAFT and its component parts, such  
3 that Defendant knew or should have known in the exercise of ordinary care, that the SUBJECT  
4 AIRCRAFT and its component parts were defective to those persons likely to use such products for the  
5 purpose and manner for which they were intended to be used, and for purposes reasonably foreseeable to  
6 Defendant. Defendant was negligent in the particulars set forth in this and the proceeding paragraphs, and  
7 said negligence was a direct, proximate, and producing cause of the subject crash, which is the basis of this  
8 action, and the resulting serious and fatal injuries sustained by Plaintiffs' decedent.  
9

10           62.     Plaintiffs are informed and believe, and thereupon allege, that Defendant knew, or in the  
11 exercise of ordinary care should have known, of the means of manufacturing the SUBJECT AIRCRAFT  
12 and its component parts, such that the type of incident and resulting injuries as described herein would be  
13 prevented. Defendant had actual knowledge that manufacturing such an aircraft and its component parts in  
14 a defective condition, as alleged herein, would cause incidents such as the crash alleged herein.  
15

16           63.     Plaintiffs are informed and believe, and thereupon allege, that the Defendant was  
17 additionally negligent in that it failed to provide proper warnings or instructions to ordinary users thereof,  
18 including Plaintiffs' decedent, and failed to recall or timely recall the products or make appropriate post-  
19 marketing efforts to prevent incidents such as the one included herein.  
20

21           64.     Plaintiffs are informed and believe, and thereupon allege, that Defendant was negligent in  
22 their failure to give adequate or proper warnings or instructions to the users thereof, including Plaintiffs'  
23 decedent, for the reasonable and foreseeable use and maintenance of the SUBJECT AIRCRAFT and its  
24 component parts, and failed to make appropriate efforts to prevent incidents such as the one included  
25 herein, and that Defendant knew or reasonably should have known that users thereof, including Plaintiffs  
26 and Plaintiffs' decedent, would not realize such dangers to which Defendant ATR had failed to warn users  
27 thereof.  
28

1           65.     Plaintiffs are informed and believe and thereupon allege that reasonable manufacturers,  
2 distributors and sellers of the said SUBJECT AIRCRAFT and its component parts under the same or  
3 similar circumstances would have provided such warnings and instructions for the use and maintenance of  
4 the SUBJECT AIRCRAFT and its component parts.

5           66.     Plaintiffs are informed and believe, and thereupon allege, that Defendant violated its duty  
6 and was negligent in those acts previously described, and further described herein. Defendant's negligent  
7 acts were a direct and proximate cause or causes of the incident, which is the basis for this action, and the  
8 serious and fatal injuries sustained by Plaintiffs' decedent.

9           67.     The defective condition of the SUBJECT AIRCRAFT and its component parts, and the  
10 resulting crash of the SUBJECT AIRCRAFT was caused by the negligence, recklessness, wrongdoing,  
11 tortuous conduct, careless acts and omissions of the Defendant in the design, manufacture, assembly,  
12 construction, testing and marketing of the SUBJECT AIRCRAFT and its component parts, and by said  
13 Defendant's failure to warn of and to take appropriate remedial action with respect to the known defective  
14 conditions, and failure to provide proper instructions for the use and maintenance of the SUBJECT  
15 AIRCRAFT and its component parts.

16           68.     Plaintiffs are informed and believe, and thereupon allege, that as a further direct and  
17 proximate result of the acts of the Defendant in defectively manufacturing said products and failing to  
18 provide adequate warnings and instructions, Plaintiffs' decedent suffered fatal injuries for which Defendant  
19 is liable and Plaintiffs have sustained the damages set forth in paragraphs 52 through 56 of this Complaint.

20  
21  
22  
23                   **SIXTH CAUSE OF ACTION**

24                   **(Breach of Warranties)**

25                   **(By All Plaintiffs Against Defendant ATR)**

26           69.     Plaintiffs refer to paragraphs 1 through 17 and 52 through 56 and incorporate them into this  
27 Cause of Action as though fully set forth herein.  
28

1           70.     Plaintiffs are informed and believe, and thereupon allege, that Defendant, by and through the  
2 sale and distribution of the products in question, expressly and impliedly warranted to the public generally,  
3 and Plaintiffs' decedent specifically, that the products in question were fit for the purposes for which they  
4 were intended.

5           71.     Plaintiffs are informed and believe, and thereupon allege, that at the time such products were  
6 marketed, sold and distributed, Defendant was in the business of selling such products, and hold and have  
7 held themselves out to the public as having superior knowledge, skill and experience in the design,  
8 construction, assembly, manufacture, testing, and inspection of such aircraft and its component parts; and,  
9 in the course of business as aircraft manufacturers, Defendant designed, constructed, assembled,  
10 manufactured, inspected, serviced, converted, and tested the SUBJECT AIRCRAFT and its component  
11 parts; and Defendant expressly and impliedly warranted were fit for intended use, being airworthy and free  
12 of defects.  
13

14           72.     Plaintiffs are informed and believe, and thereupon allege, that Plaintiffs' decedent made  
15 reasonable and foreseeable use of the products as alleged herein, and relied on the express and implied  
16 warranties made by Defendant.  
17

18           73.     Plaintiffs are informed and believe, and thereupon allege, that contrary thereto, the products  
19 in question, the SUBJECT AIRCRAFT and its component parts, were not fit for their intended and  
20 foreseeable uses.  
21

22           74.     Plaintiffs are informed and believe, and thereupon allege, that Defendant breached the  
23 express and implied warranties because of the products' failure and defective components as alleged above,  
24 and because of improper marketing involved in Defendant's failure to warn of the products' inadequacies  
25 and/or defects and failure to instruct in the safe use, operation, and storage of such products.  
26

27           75.     Plaintiffs are informed and believe, and thereupon allege, that Defendant's breach of  
28 warranties and the above-mentioned defects were a proximate and producing cause of the subject crash and



1 the fatal injuries sustained by Plaintiffs' decedent. Further, Defendant's conduct was undertaken  
2 knowingly and intentionally.

3 76. Plaintiffs are informed and believe, and thereupon allege, that the crash of the SUBJECT  
4 AIRCRAFT and the resulting fatal injuries to Plaintiffs' decedent, was proximately caused and/or  
5 substantially contributed to by Defendant's breach of express and implied warranties of the SUBJECT  
6 AIRCRAFT and its components parts' fitness for use, and Defendant's breach of its representation that the  
7 SUBJECT AIRCRAFT and its component parts were free of latent defects in manufacturer, marketing, and  
8 distribution.  
9

10 77. Plaintiffs are informed and believe, and thereupon allege, that Plaintiffs and Plaintiffs'  
11 decedent relied to their detriment upon Defendant's representations.

12 78. Plaintiffs are informed and believe, and thereupon allege, by reason of the foregoing,  
13 Defendant is liable to Plaintiffs in Breach of Warranty for the fatal injuries sustained by Plaintiffs' decedent  
14 for which Defendant is liable and Plaintiffs have sustained the damages set forth in paragraphs 52 through  
15 56 of this Complaint.  
16

17 **SEVENTH CAUSE OF ACTION**  
18 **(Wrongful Death- CCP § 377.60)**  
19 **(By All Plaintiffs Against Defendant ATR)**

20 79. Plaintiffs refer to paragraphs 1 through 17 and 52 through 56 and incorporate them into this  
21 Cause of Action as though fully set forth herein.

22 80. As a direct and proximate result of the aforementioned conduct of Defendant ATR, Lorenzo  
23 Corazon Mendoza Cervantes died. As a result, decedent's heirs, the Plaintiffs, have sustained noneconomic  
24 damages, including the loss of his love, companionship, comfort, care, assistance, protection, affection,  
25 society, support, training and guidance.  
26

27 81. As a direct and proximate result of the aforementioned conduct of Defendant ATR,  
28 Plaintiffs have sustained economic damages, including loss of his financial support, the loss of gifts and



benefits, funeral and burial expenses, household services, and economic support. Plaintiffs do not know the reasonable value thereof but prays that the same may be inserted herein when ascertained.

82. As a direct and proximate result of the aforementioned conduct of Defendant ATR, Plaintiffs claim prejudgment interest. Plaintiffs do not know the reasonable value thereof but prays that the same may be inserted herein when ascertained.

### **RELIEF SOUGHT**

WHEREFORE, Plaintiffs pray judgment against Defendants, and each of them, as hereinabove and hereinafter set forth, as follows:

1. For all relief available and not prohibited by the Montreal Convention;
2. For general damages, according to proof;
3. For special damages, according to proof;
4. For the loss of the Lorenzo Corazon Mendoza Cervantes' love, companionship, comfort, care, assistance, protection, affection, society, support, training and guidance;
5. For funeral and burial costs in an amount to be determined;
6. For prejudgment interest, according to law;
7. For all other remedies afforded by law;
8. For costs of suit; and
9. For such other relief and remedies as the court deems proper or necessary.

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**JURY DEMAND**

The Plaintiffs hereby demand trial by jury on issues triable by right of jury.

Dated: June 28, 2011

THE BRANDI LAW FIRM

By: 

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